

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5668 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

IQBALMOHMAD YUSUFVALI PATEL

Versus

DEPUTY DISTRICT DEVE. OFFICER

Appearance:

MR PB MAJMUDAR for Petitioner

MR HARIN P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 10/03/98

ORAL JUDGEMENT :

The petitioner, a Junior Clerk, had proceeded on leave for a few days. Thereafter, he remained unauthorisedly absent for a long period of 8 years. In March 1990, he suddenly wrote a letter to report for duty. He was not taken on duty. Therefore, he filed Special Civil Application No.4695 of 1990. It was dismissed.

2. In Letters Patent Appeal No.49 of 1991, the petitioner submitted that he intended to make out a case for condoning the break in service on the ground that because of physical and mental illness and insuperable social problem he was prevented from joining duty for a pretty long time. The Division Bench, therefore, disposed of the appeal by directing the appellant to make a representation indicating reasons, which compelled him to remain absent. The authorities were directed to consider the representation, by giving personal hearing to the appellant, if necessary.

3. The appellant made a written representation and was also given personal hearing and by order dated 25.4.1991, Annexure 'D', the representation has been rejected. In the order it is stated that Talati-cum-Matri of village Kolvana, the petitioner's native, was asked to report about the petitioner. As the petitioner was reported to have gone abroad, his foreign address was requested, which the petitioner's father has refused to give. Therefore, the address could not be given. The reasons given are that of father's illness and sisters' divorces. The authority did not find that those reasons were sufficient.

4. The authority has also inferred that the say of the petitioner that his economic condition was bad, was not consistent with his remaining without salary for 8 years by absenting from employment. The medical certificates were also not found to be reliable. The authority, therefore, came to the conclusion that the reasons given by the petitioner for his absence for a long period of 8 years are not sufficient. Therefore, the representation has been rejected.

5. All these facts clearly go to show that the authority has properly considered the representation and rejected the same. This does not call for any interference by the Court.

6. The learned counsel for the petitioner submits that not allowing to resume duty would amount to removal from service. This argument is required to be straightway rejected. The employer has not removed the petitioner from service. It is the petitioner himself, who has remained absent from service by his long absence of 8 years. Such question cannot arise now in second round. The Division Bench has allowed him only to make a representation for condoning the break of service.

7. Hence the petition is dismissed. Rule is

discharged. No order as to costs.

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